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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,045	11/17/2003	Christopher Albright	244209US67	1151

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EXAMINER

SORKIN, DAVID L

ART UNIT PAPER NUMBER

1723

DATE MAILED: 08/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/713,045

Applicant(s)

ALBRIGHT, CHRISTOPHER

Examiner

David L. Sorkin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-11 and 13-19 is/are rejected.
- 7) ☒ Claim(s) 4 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 20 July 2005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. Claims 11 and 16-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 11, from which claims 16-19 depend, recites "said discharge opening", for which there is lack of antecedent basis. Perhaps claim 11 should depend for claim 10, which recites "a discharge opening" rather than from claim 8. Also in claim 11, there is lack of antecedent basis for "said first end". While claim 7 recites "a first end", claim 11 does not depend directly or indirect from claim 7.

2. Though not resulting in indefiniteness issues other than those mentioned above, it appears that dependent claims 8-14 and 16-19 depend from claims in a peculiar way. For example, none of these claims depends from independent claim 7 or 15. Applicant is advised to review these claims; however, only claims 11 and 16-19 are rejected as indefinite.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 7 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Brewer (US 1,930,948). Regarding claim 1, Brewer ('948) discloses a container (10)

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including a floor, a wall extending away from said floor, the arrangement being such that substantially all of said wall is disposed above said floor, said wall defining a top opening disposed remote from said floor for the reception therethrough of the feed, the arrangement being such that the floor and said wall define therebetween an enclosure (see Figs. 2 and 3); an auger (24,25) disposed within said enclosure, said auger having an axis of rotation extending substantially vertically through the floor (see Fig. 3), said wall further including a first side (the right side in each of Figs. 1, 2 and 3) and a second side (the left side in each of Figs. 1, 2 and 3) positioned on opposing sides of the enclosure, each of said sides being disposed at dissimilar angles relative to said floor (see Figs. 1-3; page 2, lines 9-26). Regarding claim 2, said first side is disposed substantially vertically relative to said floor (see Figs. 2 and 3). Regarding claim 3, said first and second sides are not symmetrical (see Figs. 2 and 3). Regarding claim 7, Brewer ('948) discloses a container (10) including a floor, a wall extending away from said floor, the arrangement being such that substantially all of said wall is disposed above said floor, said wall defining a top opening disposed remote from said floor for the reception therethrough of the feed, the arrangement being such that the floor and said wall define therebetween an enclosure (see Figs. 2 and 3); an auger (24,25) disposed within said enclosure, said auger having an axis of rotation extending substantially vertically through the floor (see Fig. 3), said wall further including a first end and a second end positioned on opposing sides of the enclosure, said wall further including a first side (the right side in each of Figs. 1, 2 and 3) and a second side (the left side in each of Figs. 1, 2 and 3) positioned on opposing sides of the enclosure, a first angle

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between said second side and said axis of rotation being greater than a second angle between said first side and said axis of rotation (see Figs. 1-3; page 2, lines 9-26).

Regarding claim 15, Brewer ('948) discloses a container (10) including a floor, a wall extending away from said floor, the arrangement being such tat substantially all of said wall is disposed above said floor, said wall defining a top opening disposed remote from said floor for the reception therethrough of the feed, the arrangement being such that the floor and said wall define therebetween an enclosure (see Figs. 2 and 3); an auger (24,25) disposed within said enclosure, aid auger having an axis of rotation extending substantially vertically through the floor (see Fig. 3), said wall further including a first side (the right side in each of Figs. 1, 2 and 3) and a second side (the left side in each of Figs. 1, 2 and 3) positioned on opposing sides of the enclosure, said distance between said auger and said first side of said wall being shorter than the distance between said auger and said second side of said wall (see Fig. 1).

5. Regarding claim 15, Knight (US 6,409,376) discloses a mixing apparatus (10) for mixing livestock feed (12), said apparatus comprising a container (10) including a floor (50), a wall (18) extending away from said floor, the arrangement being such tat substantially all of said wall is disposed above said floor, said wall defining a top opening (20) disposed remote from said floor for the reception therethrough of the feed, the arrangement being such that the floor and said wall define therebetween an enclosure (22); an auger (24) disposed within said enclosure, aid auger having an axis of rotation (26) extending substantially vertically through the floor (see Fig. 3), said wall further including a first side (the left side in each of Figs. 2 and 3) and a second side

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(the right side in each of Figs. 2 and 3) positioned on opposing sides of the enclosure, said distance between said auger and said first side of said wall being shorter than the distance between said auger and said second side of said wall (see Figs. 2 and 3).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 5, 6, 8, 9, 11, 13, 14, 16, 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brewer ('948). The apparatus of Brewer ('948) was discussed above; however, numerical values of the wall angles are not explicitly disclosed. Still, Fig. 2 depicts the angle between lines A—A and B—B of about 6.5 degrees, implying a difference between the first second angle of about 13 degrees. This would have suggested a value within the claimed ranges to one of ordinary skill in the art. Regarding claim 8, said first side is disposed substantially vertically relative to said floor (see Figs. 2 and 3). Regarding claim 9, said first and second sides are not symmetrical (see Figs. 2 and 3). Claim 11 only discusses a discharge opening which is not clearly recited as part of the claimed structure. Regarding claim 16, said first side is disposed substantially vertically relative to said floor (see Figs. 2 and 3). Regarding claim 17, said first and second sides are not symmetrical (see Figs. 2 and 3). Regarding claim 19, in Brewer ('948), the percent by which the distance from the auger to the first versus second wall varies from about zero at the base to significantly greater

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than 5% at the top (See Figs. 1-3). At points between the top and bottom the difference is in the claimed range.

***Allowable Subject Matter***

8. Claims 4 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claim 18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.


***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
David L. Sorkin  
Primary Examiner  
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DLS